

American Industries of Indiana, Inc. and Southwest Ohio District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Cases 9-CA-29630 and 9-CA-29839

November 22, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon charges filed by the Union in Case 9-CA-29630 on June 1, 1992, and in Case 9-CA-29839 on August 6, the General Counsel of the National Labor Relations Board issued complaints against American Industries of Indiana, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The first complaint issued July 14. On July 31, the Respondent filed an answer admitting in part and denying in part the allegations of the initial complaint.

On September 22, 1992, the General Counsel issued a consolidated complaint. On June 23, 1993, the General Counsel notified the Respondent, in writing, of its obligation to file an answer to the consolidated complaint and advised the Respondent that unless its answer was received by close of business on June 30, 1993, the General Counsel would file a Motion for Summary Judgment with the Board. The Respondent failed to file an answer to the consolidated complaint with the Board.

On July 23, 1993, the General Counsel filed a Motion for Summary Judgment with exhibits and a supporting memorandum attached. On August 4, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

The Respondent's answer to the initial complaint admits all substantive facts necessary to establish the unfair labor practices alleged. The consolidated complaint served on the Respondent specifically stated that unless an answer was filed within 14 days of service, "All of the allegations of the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The Respondent did not file an answer to the consolidated complaint within the required time, nor did it request an extension of time in which to file an answer. In addition,

the Respondent was advised in writing that unless an answer to the consolidated complaint was filed, a Motion for Summary Judgment would ensue. The Respondent has continued to fail to file an answer to the consolidated complaint or a response to the Board's Notice to Show Cause why summary judgment should not be granted.

As the Respondent's answer to the initial complaint admits all substantive facts necessary to establish the unfair labor practices alleged and does not raise any litigable issues, and as the Respondent has failed to file an answer to the consolidated complaint as required by the Board's Rules and has failed to show good cause why it has not done so, we grant the General Counsel's Motion for Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Hamilton, Ohio, has been engaged as a contractor in the construction industry performing drywall, metal stud, and acoustical ceiling construction. During the 12-month period preceding issuance of the consolidated complaint, the Respondent, in conducting its business operations, purchased and received goods valued in excess of \$50,000 directly from points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute an appropriate unit for purposes of collective bargaining under Section 9(b) of the Act:

All carpenters in the employ of Respondent, excluding all other employees and all guards and supervisors within the meaning of the Act.

In 1989, the Respondent granted recognition to the Union pursuant to Section 8(f) of the Act and entered into a collective-bargaining agreement with the Union. This agreement was effective from June 1, 1989, to June 1, 1992. From February 1 through June 1, 1992, the Respondent failed to continue in effect all the terms and conditions of employment of this agreement by failing to remit to the Union, on behalf of the unit employees, health and welfare and pension contribu-

¹ *Caribe Cleaning Services*, 304 NLRB 932 (1991), is distinguishable. There, unlike here, the answer to the original complaint denied its substantive allegations.

tions. The Respondent engaged in this conduct without the Union's consent.

By letter dated March 2, 1992, the Union requested that the Respondent furnish it with certain information necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since March 2, 1992, the Respondent has failed and refused to furnish the Union with the requested information.

By failing and refusing to honor the terms of its collective-bargaining agreement with the Union in the manner described above, and by failing and refusing to provide relevant and necessary information to the Union at the Union's request, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the limited exclusive collective-bargaining representative of the unit employees in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing to abide by the terms and conditions of its collective-bargaining agreement with the Union, and by failing and refusing to provide the Union with relevant and necessary information on request, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully failed to continue in full force and effect the terms and conditions of employment of its 1989-1992 agreement with the Union, we shall order it to comply with those terms and conditions of employment. Specifically, we shall order the Respondent to make unit employees whole by remitting to the fringe benefit funds the contractually required payments that would have been made on behalf of unit employees but for the Respondent's failure to adhere to its agreement, with any interest or other sums applicable to those payments to be determined in accordance with the Board's decision in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). We shall also require the Respondent to reimburse unit employees, with interest, for any expenses or loss of benefits they may have suffered as a result of its failure to make the contractually required fringe benefit contributions, as prescribed in *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981). All backpay amounts shall be computed as in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), and inter-

est shall be computed as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Having found that the Respondent unlawfully failed to furnish the Union with requested information, we shall order it to provide that information at the Union's request.

ORDER

The National Labor Relations Board orders that the Respondent, American Industries of Indiana, Inc., Hamilton, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to make the payments called for in its collective-bargaining agreement with the Union to the health and welfare and pension benefit funds.

(b) Failing and refusing to furnish the Union with requested information that is relevant to and necessary for the Union's performance of its duties as the limited exclusive collective-bargaining representative of the employees in the following appropriate unit:

All carpenters in the employ of the Respondent, excluding all other employees and all guards and supervisors within the meaning of the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole the unit employees and, on their behalf, the health and welfare and pension benefit funds, for any losses suffered as a result of the Respondent's failure since March 2, 1992, to adhere to the terms of the 1989-1992 agreement, in the manner set forth in the remedy section of this Decision and Order.

(b) On request, furnish the Union with the information requested in paragraphs 1, 2, 3, 6, 7, and 8 of its letter dated March 2, 1992.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, trust fund statements, and all other documents and records necessary to analyze the amount of backpay and the fringe benefit payments due under the terms of this Order.

(d) Post at its facility in Hamilton, Ohio, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Re-

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

spondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to make the payments called for in our collective-bargaining agreement with the Union to the health and welfare and pension benefit funds.

WE WILL NOT fail and refuse to furnish the Union with requested information that is relevant to and necessary for the Union's performance of its duties as the limited exclusive collective-bargaining representative of the employees in the following appropriate unit:

All carpenters in the employ of American Industries of Indiana, Inc., excluding all other employees and all guards and supervisors within the meaning of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole, with interest, our unit employees and, on their behalf, the health and welfare and pension benefit funds, for any losses they have suffered because of our failure since March 2, 1992, to adhere to the terms of our 1989-1992 agreement with the Union.

WE WILL, on request, furnish the Union with the information requested in its letter dated March 2, 1992.

AMERICAN INDUSTRIES OF INDIANA,
INC.